

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JESSE MICHEL WYNN,

Plaintiff,

v.

R. ESCARCEGA, et al.,

Defendants.

Case No. 1:21-cv-00202-AWI-JLT (PC)

**ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE DISMISSED FOR
FAILURE TO EXHAUST**

21-DAY DEADLINE

Jesse Michel Wynn alleges correctional officers at California Correctional Institution subjected him to excessive force. (Doc. 1.) In his complaint, Plaintiff indicates that he has not yet completed the administrative grievance process and that his grievance concerning the subject incident “is being reviewed.” (*Id.* at 2.)

The Prison Litigation Reform Act provides that “[n]o action shall be brought with respect to prison conditions under . . . any other Federal law . . . by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion of administrative remedies is mandatory and “unexhausted claims cannot be brought in court.” *Jones v. Bock*, 549 U.S. 199, 211 (citation omitted). The exhaustion requirement applies to all inmate suits relating to prison life, *Porter v. Nussle*, 534 U.S. 516, 532 (2002), regardless of the relief sought by the prisoner or offered by the administrative process, *Booth v. Churner*, 532 U.S. 731, 741 (2001). Inmates are required to

1 “complete the administrative review process in accordance with the applicable procedural rules,
2 including deadlines, as a precondition to bringing suit in federal court.” *Woodford v. Ngo*, 548
3 U.S. 81, 88, 93 (2006). Generally, failure to exhaust is an affirmative defense that the defendant
4 must plead and prove. *Jones*, 549 U.S. at 204, 216. However, courts may dismiss a claim if
5 failure to exhaust is clear on the face of the complaint. *See Albino v. Baca*, 747 F.3d 1162, 1166
6 (9th Cir. 2014).

7 It is clear on the face of his complaint that Plaintiff failed to exhaust administrative
8 remedies prior to filing suit. Accordingly, within 21 days of the date of service of this order,
9 Plaintiff SHALL show cause in writing why this action should not be dismissed for his failure to
10 exhaust. Alternatively, Plaintiff may file a notice of voluntary dismissal. Failure to comply with
11 this order will result in a recommendation that this action be dismissed.

12
13 IT IS SO ORDERED.

14 Dated: June 9, 2021

15 _____ /s/ **Jennifer L. Thurston**
16 CHIEF UNITED STATES MAGISTRATE JUDGE

17
18
19
20
21
22
23
24
25
26
27
28